HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 799 of 2007

Between:

Vemula Venkataiah and nine others

… Appellants

And

The Special Deputy Collector (L.A.),
Telugu Ganga Project, Unit-II, Kadapa
and three others

… Respondents

:: J U D G M E N T ::

Counsel for the appellants : Shri P. Venugopal for
Shri Y. Venkata Satyam

September 28, 2007

Per G.S. SINGHVI, CJ

This is an appeal for setting aside order dated 6.8.2007 passed by the learned Single Judge, whereby he rejected the appellants' prayer for issue of a mandamus to the respondents to pay them ex gratia in terms of G.O.Ms.No.192, Irrigation and Command Area Development Department, dated 2.12.1998 as per SSR rates of

2002-2003 in lieu of submergence of their property in Telugu Ganga Project.

With a view to compensate landless poor persons, who were assigned government land on 'D' Form pattas and whose lands got submerged in irrigation and power projects or were taken for industrial projects, the State Government issued G.O.Ms.No.180, Revenue (B) Department, dated 9.2.1984 and G.O.Ms.No.603, Revenue (B) Department, dated 28.5.1986. Subsequently, the State Government issued G.O.Ms.No.43, Revenue (B) Department, dated 23.1.1988 and G.O.Ms.No.428, Revenue (Assn.I) Department, dated 25.4.1992 and restricted the compensation to verifiable improvements made by the assignees. On 23.12.1993, the State Government issued G.O.Ms.No.1307, Revenue (Assignment-I) Department for payment of lump sum ex gratia equivalent to the market value to the assignees whose lands were resumed for projects and others public purposes. Paragraph 6 of that G.O. reads as under:

"6. The Government after careful examination of the matter in consultation with the Commissioner of Land Revenue, Irrigation and Command Area Development Department and Finance Department hereby order payment of lump sum ex gratia equivalent to the market value to the assignees whose lands are resumed for the projects and other public purposes and equivalent to valuation for other private orchards and structures, wells etc., removing the distinction stipulated in para (3) of G.O.Ms.No.428 Revenue (Assn.I) Department dt.25.4.1992, subject to the following conditions:-

a) that the amount is to be treated as ex gratia;

b) that the assignees would not be entitled for making reference under Section 18 and Section 28-A of Land Acquisition Act to the Courts;

c) an amount equivalent to 15% for the lands resumed prior to 30.4.1982 and 30% after that date, on the market value payable under Section 23(3) of Land Acquisition Act may be considered

for being included in the land ex gratia payable to the assignees as solatium;

d) that the assignees will not be entitled for interest or additional market value under the Land Acquisition Act;

e) that the above conditions shall be made applicable to all the assigned lands resumed on or after 9-2-1984 (i.e. the date of issue of G.O.Ms.No.180, Revenue (B) Department dt.23.1.1998."

After five years, the State Government issued G.O.Ms.No.192, dated 2.12.1998 for payment of compensation in respect of the structures in the lands acquired for irrigation projects. That G.O. reads as under:

"ORDER:-

In the circumstances stated in the reference first and second read above, the Govt. issue the following orders for payment of compensation to the structures in the lands acquired for the irrigation projects:-

i) payment of compensation in respect of structures constructed on poramboke lands belonging to landless poor persons which are existing on ground for more than ten (10) years should be treated as eligible for payment of ex gratia on lines of G.O.Ms.No. 1308, Revenue, dt. 23.12.1993. The occupants/encroachers are otherwise eligible landless poor persons shall be regularized by issuing "D" Form Pattas so as to make payment of ex-gratia under the G.O. referred to above to eligible encroachers.

ii) The notification under Sec. 4 (1) of L.A. Act need not go before the screening committee for approval and that post facto approval shall be obtained.

iii) A senior Advocate shall be engaged who could be involved right from the initial stage to assist the Spl. Collector, and the L.A.O. to take necessary preventive steps against future litigations.

iv) At the time of notification, LAO in addition to

physical verification should also video tape the existing structures in the presence of persons affected. The cost of video tape shall be borne by the Requisitioning Dept./Project authorities.

v) The valuation statement prepared by the irrigation officers in respect of all such structures should be got super checked by the Superintending Engineer concerned.

vi) The Special Collectors/L.A.Os shall be the members of Project Implementation Committee along with Chief Engineers/Project Administrators wherever notified.

All the Special Collectors/LAOs are requested to follow the above orders scrupulously."

For execution of Telugu Ganga Project, the State Government acquired large chunks of land in different villages of Kadapa District. The entire village of Malinenipatnam was acquired under the Land Acquisition Act, 1894 (for short, 'the 1894 Act'). Notification under Section 4 (1) was issued in 1996 and the awards were passed in 1998. After six years, the appellants made representation dated 31.5.2004 for payment of ex gratia in terms of G.O.Ms.No.1307, dated 23.12.1993 read with G.O.Ms.No.192, dated 2.12.1998. Their representation was forwarded by the District Revenue Officer to Special Collector (Land Acquisition), Telugu Ganga Project, Nellore, who sent letter dated 12.7.2004 to Special Deputy Collector, Telugu Ganga Project, Unit-II, Kadapa for making an enquiry. The Executive Engineer, SSP Division-IV furnished valuation statements showing the cost of ten structures in Survey Nos.652/2 and 652/3 over an extent of 0.35 acres out of 5.06 acres of Kunta Poramboke of Malinenipatnam Village as Rs.17,43,405/-. However, he did not indicate SSR rates adopted for determining the value of the structures. In the meeting of the Empowered Committee held on

21.3.2006 in the chamber of District Collector, Kadapa, it was decided that compensation be paid to the leftover villages in terms of G.O.Rt.No.802, Irrigation & CAD (Projects Wing – T.G.P.II) Department, dated 30.10.2003 by adopting SSR rates of 2002-2003. However, as Malinenipatnam was not a leftover village and compensation had already been paid to the assignees at SSR rates of 1997-98, the appellants' claim for payment of compensation for the structures as per SSR rates of 2002-2003 was not entertained.

The appellants questioned the indirect rejection of their claim for payment of ex gratia as per SSR rates of 2002-2003 by contending that other similarly situated persons have been paid ex gratia at those rates and there is no rhyme or reason to discriminate them. They relied on order dated 26.4.2005 passed by this Court in Writ Petition No.19561 of 2001 and pleaded that relief in similar terms should be granted to them.

In the counter affidavit filed by Shri M. Guru Prasad, Special Deputy Collector (LA) (FAC), Telugu Ganga Project, Unit-II, Kadapa, it was averred that the petitioners had raised unauthorised structures in Kunta Poramboke and that 'D' Form pattas were issued in favour of the petitioners (the appellants herein) only as a part of the modalities adopted for payment of ex gratia in accordance with G.O.Ms.No.1307, dated 23.12.1993. In paragraphs 5 and 6 of his affidavit, Shri M. Guru Prasad averred as under:

"5. In reply to para 3 of the petitioners affidavit, it is submitted that it is a fact that the Kunta Poramboke of Malinenipatnam Village of the petitioners' huts/structures were converted as village site poramboke for grant of 'D' patta to the existing structures as a part of modalities for purpose of payment of ex gratia as per G.O.Ms.No.1307 Rev. Assignment (1) Dept., dt.23.12.1993. It is a fact that the Empowered Committee has decided to pay compensation to the left over villages as per terms of

G.O.Rt.No.802, Irrigation & CAD (Projects Wing – T.G.P.-II) Department dt.30.10.2003 and decided to adopt rates of SSR 2002-03. Malinenipatnam is not a left over village and compensation was already paid in the year 1998. Hence, it is submitted that they are entitled for payment of ex gratia equal to market value paid to the other structures which were acquired in the village in the year 1998 with SSR rates 1997-98, subject to other conditions of G.O.1307 Rev. Assign(1) Dept., dt.23.12.1993 and are not entitled for 2002-03 SSR rates as claimed by the petitioners.

6. In reply to para 4 of the petitioners' affidavit it is submitted that it is a fact that a clarification was asked to Government in reference No.D/452/06 dt.19.9.2006 whether to consider 1997-98 SSR or 2002-03 SSR as the petitioners are not coming forward to give affidavits agreeing for the conditions of G.O.Ms.No.1307 Rev. Assign (I), dt.23.12.1993 for payment of ex gratia. It is not correct to compare with 64 number of structures in Rajupalem (V) in which these structures are a separate habitation and are not missing structures in the original Award. It is a fact that the habitations inundated with waters several times and unfortunately the estimates prepared by the Engineering Department in year 1999 in which 'D' form pattas originally given were not traced and the 'D' form pattas originally given in the 1999 were cancelled. Fresh 'D' pattas were issued and then estimates prepared by Engineering Department with SSR rates 2002-03 and the same were considered by Government and ex gratia paid in view of urgency of the case to answer contempt proceedings before the Hon'ble High Court.

It is submitted that the case of separate habitation cannot be taken for the missing structures that too in Kunta Poramboke which is prima facie prohibited to occupy. It is also a fact that as the Land Acquisition Officer is unable to establish whether these structures are existing and missed during the Award proceedings in 1998 or whether these structures raised with a mala fide intention to claim ex gratia in view of issuance of G.O. 192 I & CAD dated 2.12.1998 since it gives scope for payment of ex gratia for unauthorised structures existing for last 10 years. In the above circumstances, it is submitted that in the absence of proving element of fraud, it is offered to pay ex gratia with SSR rates 1997-98 on par with other structures covered by Award. Since the petitioners are not coming forward for abiding for the conditions of G.O.1307 Rev. Assign.(I) dated 23.12.1993, the ex gratia could not be paid and hence the writ petition."

The learned Single Judge, after taking note of the rival pleadings, ruled that the appellants are not entitled to ex gratia as per SSR rates 2002-2003 because the land on which they had unauthorisedly raised structures was Kunta Poramboke and had not been notified under the 1894 Act. The learned Single Judge observed that 'D' Form pattas were granted to the writ petitioners only with a view to give them benefit of the policy framed by the government and held that they cannot claim ex gratia at a rate higher than at which other persons of the village were paid compensation. Some of the observations made by the learned Single Judge are worth noticing. The same are extracted below:

"… It is stated that the petitioners had constructed structures unauthorisedly in the Kunta Poramboke land. As the said structures existed in the land, which vested with the Government, there was no occasion for notifying the said land under the provisions of the Land Acquisition Act, 1894. But, however, when representations were made by the petitioners, the respondents in order to extend the benefit of G.O.Ms.No.192 dated 2.12.1998 and subject to compliance of G.O.Ms.No.1308 dated 23.12.1993, granted D-Form pattas to them. It is stated in the counter affidavit that those structures are not covered by the notifications issued under Section 4(1) of the Land Acquisition Act during the year 1996-97. So far as the village of Malinenipatnam is concerned, even for the private properties notification under Section 4(1) of the Land Acquisition Act was issued in the year 1996 and awards were passed in the year 1998. Merely because the petitioners were not physically dispossessed along with the structures in the year 1996, the petitioners cannot claim any higher compensation based on SSR rates of 2002-03. It is stated that the valuation was adopted by taking into account the SSR rates of 1997-98. Further, it is also not a case to claim compensation on par with the other lands acquired, because these lands were not assigned to the petitioners before the structures were raised. The petitioners on their own unauthorisedly raised structures and only to make them eligible for payment of ex gratia as per G.O.Ms.No.192, dated 2.12.1998, D-Form pattas were issued to them. As much as the structures in other lands which were required for public purpose were notified in the year 2001, the

rates of SSR 2002-03 were adopted. But, so far as Malinenipatnam village is concerned, as the award was passed in the year 1998, the petitioners are not entitled to seek ex gratia based on SSR rates of 2002-03. …"

Shri P. Venugopal, learned counsel for the appellants submitted that his clients are entitled to ex gratia at SSR rates of 2002-2003 because no compensation was paid to them till the revision of SSR rates. He strongly relied on order dated 26.4.2005 passed by another learned Single Judge in Writ Petition No.19561 of 2001 and the decision taken in the meeting of the Empowered Committee held on 21.3.2006, and argued that the appellants cannot be discriminated in the matter of payment of ex gratia.

We have given serious thought to the arguments of the learned counsel and scrutinised the record. In our opinion, the appeal is meritless and is liable to be dismissed summarily. It is neither the pleaded case of the appellants nor the learned counsel argued that his clients raised structures on the assigned land or that the D-Form pattas were issued in respect of the structures raised on the assigned lands. Rather, it is an admitted position that the appellants unauthorisedly raised structures on a small fraction of Kunta Poramboke of Malinenipatnam Village. Since Kunta Poramboke is government land, there was no occasion for the respondents to have notified the same under Section 4(1). Therefore, the learned Single Judge rightly concluded that the appellants are not entitled to ex gratia at a rate higher than the compensation paid in lieu of the assigned lands, which were acquired for Telugu Ganga Project in 1996.

We are also convinced that order dated 26.4.2005 passed by another learned Single Judge in Writ Petition No.19561 of 2001 cannot be made basis for granting relief to the appellants because

the petitioners of those cases are not shown to have raised unauthorised structures on the government land. According to Sri M. Guru Prasad, the structures raised by those who were petitioners in Writ Petition No. 19561 of 2001 were part of habitation, which got inundated with water several times. This has not been converted by the appellants. Therefore, the order passed in Writ Petition No. 19561 of 2001 cannot be made basis for directing the respondents to pay ex-gratia to the appellants at SSR rates of 2002-2003.

No other point has been argued.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

September 28, 2007

C.V. NAGARJUNA REDDY, J

svs/ARS